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INTERSTATE COMMERCE COMMISSION

The ICC voted 10/7/86 to modify its current procedures for determining railroad revenue adequacy. Among the approved modifications are: 1) Depreciation accounting rather than retirement-replacement-betterment accounting would be used; 2) Accumulated deferred tax reserves would be deducted from the investment base in the calculation of return on investment (ROI); 3) Taxes that result from rail operations and interest income associated with rail working capital would be included in ROI calculations; and 4) The results of Class I railroad-owned subsidiaries that are at least 50-percent owned and which support railroad operations would be included in ROI calculations. The Commission also voted to discontinue its efforts to base revenue adequacy on replacement cost data.

In a related action, the GAO released a study prior to the ICC meeting analyzing alternative methods of measuring revenue adequacy. The changes voted by the ICC reflect several of the concerns identified in the GAO report. A copy of the report, GAO/RCED-87-15BR, may be obtained by writing the U.S. Government Accounting Office, P.O. Box 6015, Gaithersburg, MD 20877, or by calling the GAO at 202/275-6421.

NATIONAL SCIENCE FOUNDATION

A Supervisory Auditor (Head, Internal Audit Section) is being sought by the NSF. Duties performed by the individual holding this position include: directing the management of such audit responsibilities as in-house audits including financial and administrative ADP systems, procurement, property management and other administrative operations; developing the section's part of the annual audit plan with emphasis on efforts to avoid or minimize opportunities for fraud, waste and mismanagement; and establishing, maintaining, reviewing and improving, as necessary, internal controls. Applications are due by 10/24/86. For further information contact the NSF Personnel and Management Division at 202/357-7840 and refer to Announcement Number 86-140.

SECURITIES AND EXCHANGE COMMISSION

Twenty-five recommendations were made at the SEC's fifth annual Government-Business Forum on Small Business Capital Formation covering issues such as security regulation, liability insurance, financial services and payroll costs. The Forum, held 9/25-27/86 in Washington, D.C., included 150 participants whose recommendations will be provided to the Congress and various Federal agencies. Among the recommendations were suggestions to: amend FASB treatment of stock options by charging to income the good faith estimate of the fair value of the option; adopt a new uniform or standard security for small businesses that allows deductible interest payments for the issuer, is taxed by the holder as regular income and allows losses to be treated as ordinary deductions; facilitate the investment by pension funds of some percentage of their assets in small businesses through debt and equity participations; and enable corporations to limit the personal liability of corporate directors for violations of the director's fiduciary duty of care. The Forum is hosted annually by the SEC to provide an opportunity for small businessmen and representatives of state and Federal governments to discuss capital raising problems of small businesses.

SECURITIES AND EXCHANGE COMMISSION

Following the signing of the Tax Reform Act of 1986, the SEC will hold an open meeting to consider whether to authorize the issuance of an interpretive release concerning the disclosure of the effects of the Act. Additionally, the Commission may consider the disclosure by registrants of the effects of the Act, as well as whether it should object to the presentation of disclosures that quantify the effects of the Tax Reform Act by the pro forma application of the FASB's Exposure Draft, "Proposed Statement of Financial Accounting Standards - Accounting for Income Taxes." For additional information contact John A. Heyman at 202/272-2130.

TREASURY, DEPARTMENT OF

Amendments to the Income Tax Regulations concerning the definition of the term "S corporation" were recently proposed by the IRS (see the 10/7/86 Fed. Reg., pp. 35659-66). The proposed regulations provide that the term "S corporation" means a small business corporation for which an election under section 1362(a) is in effect for the taxable year. And, the term "small business corporation" means a domestic corporation that is not an ineligible corporation and does not have: 1) more than 35 shareholders; 2) a person (other than an estate and certain trusts) as a shareholder, who is not an individual; 3) a nonresident alien as a shareholder; or, 4) more than one class of stock. For purposes of determining whether a corporation has more than 35 shareholders, the proposed regulations provide that stock owned by a husband and wife is treated as if owned by one individual, regardless of the form in which they own the stock. Additionally, the regulations provide that a Subpart E trust, a voting trust, a certain type of testamentary trust, and a qualified Subchapter S trust that is treated as a Subpart E trust are permitted to be shareholders of a small business corporation. The amendments are proposed to be effective for taxable years beginning after 12/31/82. Comments are requested by 12/8/86. For further information contact Robert Ginsburgh at 202/566-3297.

Merlin W. Heye, CPA, as recently been appointed director of the new Fort Lauderdale IRS District. The new district will be responsible for tax matters in the 17 counties in southern Florida. Taxpayers in that area filed an estimated 2.8 million Federal income tax returns in 1985. Mr. Heye began his IRS career as a revenue agent, and in 1974 was chosen for the IRS Executive Selection and Development Program. On completing the program, he was named assistant regional commissioner for employee plans and exempt organizations in the IRS Central Region. In 1976, Mr. Heye became assistant director of the examination division in Washington. From 1982 to the present he has headed IRS activities throughout all of Florida as the district director in Jacksonville, FL. Mr. Heye holds a bachelor's degree from Hastings College in Nebraska.

A listing of qualified sponsors of continuing education programs that satisfy education requirements for enrolled agents eligible to practice before the IRS has been released by the Service (see the 10/9/86) Fed. Reg., pp. 36335-7). The list is a result of an amendment to Circular 230 which was published on 1/22/86. That

document requires that those enrolled to practice before the IRS renew their enrollment on a periodic basis. A condition of eligibility for renewal is the satisfaction of the continuing professional education requirements. Accredited education institutions, as well as professional organizations recognized by the Director of Practice whose programs include offering CPE opportunities within the scope of regulation qualify as a program sponsor. The AICPA is among those meeting this requirement. For further information contact Mr. Leslie Shapiro at 202/535-6787.

IRS Commissioner Lawrence B. Gibbs addressed the topics of the new Tax Reform Act and professional conduct in two speeches last week. Speaking before the D.C. Bar Section of Taxation 10/6/86, Commissioner Gibbs told the group the IRS is taking a high profile position in implementing the new tax law, involving practitioners as early as possible in the process. The first chance for input will come soon, the Commissioner said, with a Federal Register notice listing the areas of the new law for which the IRS will be seeking public comments. Providing a "sneak preview" of some of those areas for his audience, the Commissioner mentioned the following items: limits on passive losses; alternative minimum tax; capitalization of production costs; taxable years of certain entities; arbitrage of tax exempt bonds; reporting on real estate transactions; modifications to the foreign tax credit; branch profits tax; allocation of interest expense to foreign source income; and rules regarding "lines of business" and "highly compensated employee" for pension plan purposes. Additionally, the Commissioner noted that the most crucial elements would be addressed first with the review process proceeding at both the IRS and Treasury at the same pace, "so that sticking points can be removed simultaneously."

The proposed standards for IRS practitioners under Circular 230 were discussed by Commissioner Gibbs 10/8/86 before the North Carolina Association of CPAs. He stated that changes were being proposed due to "an increased awareness about the critical importance of practitioners in our tax system." This awareness, the Commissioner said, perhaps began some ten years ago with the enactment of tax preparer penalties. "It has continued with the compliance penalties in TEFRA and more recent acts, as well as the Circular 230 amendments relating to tax shelter promotions several years ago. And it perhaps culminated in the recent decisions by the AICPA and the ABA Taxation Section to re-examine their ethical rules relating to standards that should guide tax practitioners in advising clients in situations involving tax planning and return preparation generally." The thrust of the emerging rules, the Commissioner said, "is to define a practitioner not as a go-between for sending tax information to the IRS, but as an instrument for the full and accurate reporting of clients' tax information." "We feel," Commissioner Gibbs said, that "the current standards warrant some further definition. We are anxious to hear your reactions to the proposed changes and any suggestions you might have about alternative approaches." Commissioner Gibbs also addressed the topics of practitioner access to the problem resolution program and electronic filing. Copies of the speeches are available from the IRS by calling 202/566-4054.

SPECIAL: LEGISLATION AMENDING CIVIL RICO PASSES HOUSE

Legislation passed by voice vote in the House of Representatives 10/7/86 would amend the civil provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO). The measure, H.R. 5445, introduced by Rep. Rick Boucher (D-VA) will reduce substantially the misuse of civil RICO in ordinary commercial litigation. H.R. 5445 will eliminate treble damages for virtually all cases in which civil RICO has been abused, and will do so for pending cases as well as for future cases. Automatic treble damages will be available in only two limited categories of cases: 1) cases brought on behalf of a government entity by the US or a state attorney general; and 2) cases in which there has been a prior-criminal-conviction of the defendant.

No other plaintiffs would have a right to automatic treble damages. Most other plaintiffs could only sue for actual damages. Business versus business RICO suits, one major source of abuse to date, would be restricted in this way. This de-trebling provision would also apply to the other major source of inappropriate civil RICO cases, cases arising out of disputes covered by the securities laws.

A small category of plaintiffs could seek an additional award, but it could never exceed more than twice the amount of their actual damages. They could not get any such additional award unless they are individuals suing in connection with a personal or household transaction and they can prove that the defendant acted with wanton disregard for the plaintiff's rights. Even if they meet those threshold tests, the amount of the additional award is tied to proof of the egregiousness of the defendant's actions. The full award would be available only in the case of truly outrageous and unconscionable conduct. The de-trebling provisions of the bill would become effective upon enactment in most cases, thereby bringing immediate relief to defendants in the thousands of pending civil RICO cases, which represent billions of dollars in potential liability.

The statute of limitations provision of H.R. 5445 would eliminate another major source of concern for RICO defendants. Under this proposal, plaintiffs would, in most cases, have to bring their actions within three years of when their claim accrued or the injury to them ceased. The measure is now before the U.S. Senate.

SPECIAL: CONGRESS PASSES BILL REGULATING GOVERNMENT SECURITIES DEALERS

A compromise version of H.R. 2032, the Government Securities Act of 1986, passed the U.S. House of Representatives on 10/6/86 and the U.S. Senate on 10/9/86. The compromise bill is substantially different from the measure passed by the House on 9/17/85 in that it no longer establishes a self-regulatory body under Federal Reserve Board rulemaking authority (see the 9/23/85 Wash. Rpt). The new measure requires that currently unregulated government securities brokers and dealers register with the SEC. Government securities brokers and dealers already registered are to notify the appropriate Federal regulatory agency. Additionally, government securities brokers and dealers are instructed to file with the approprite agency, at least annually, a balance sheet and income statement certified by an independent public accountant which is prepared on a calendar or fiscal year basis. The Treasury Secretary, in consultation with the SEC and the Federal Reserve Board, has the authority to promulgate rules governing government securities transactions, including regulations on capital adequacy standards, the

acceptance of custody and use of customers' securities, and the transfer and control of government securities subject to repurchase agreements and similar transactions. Under a sunset provision, Treasury's rulemaking authority expires in October 1991. At that time, the Congress, after evaluating recommendations made in reports submitted by the Department of Treasury, the SEC, and the FED, must decide whether to extend the Secretary of Treasury's authority. H.R. 2032 must be signed by President Reagan before becoming law.

For further information contact Shirley Hodgson or Joseph Petito at 202/872-8190.

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